

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ARDWAN DALOU,

Defendant-Appellee.

UNPUBLISHED

February 23, 1999

No. 212558

Oakland Circuit Court

LC No. 97-156880 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

The prosecution appeals as of right from a circuit court order granting defendant's motion to quash. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with carrying a concealed weapon, MCL 750.224; MSA 28.421. After a preliminary examination, defendant was bound over to the circuit court for trial as charged. In the circuit court, defendant moved to quash the information and to suppress evidence. Pursuant to the prosecution's specific request for an evidentiary hearing on defendant's motion to suppress, the trial court explained that it would hold a suppression hearing if it denied defendant's motion to quash. After considering supplemental briefs, the trial court granted defendant's motion to quash on the ground that the police lacked probable cause to arrest defendant. The trial court made its ruling on the basis of its finding that the police officer who discovered the incriminating evidence did so as a result of an unlawful entry into defendant's vehicle.

The function of a magistrate at a preliminary examination is to determine (1) whether a crime has been committed and (2) whether there is probable cause for *charging* the defendant with that crime. MCL 766.13; MSA 28.931; *People v King*, 412 Mich 145, 152-153; 312 NW2d 629 (1981). The role of a circuit court deciding a motion to quash is to determine whether the magistrate's decision constituted an abuse of discretion. See, e.g., *People v Talley*, 410 Mich 378, 385-386; 301 NW2d 809 (1981), overruled in part on other grounds by *People v Kaufman*, 457 Mich 266, 276; 577 NW2d 466 (1998). Accordingly, the trial court's decision to grant defendant's motion to quash on the ground that the police lacked probable cause to make the arrest exceeded the proper scope of review.

This constitutional determination, although made in an order entitled, in part, “Order Granting Motion to Quash,” was in fact a dismissal of the charge based on the trial court’s determination that the incriminating evidence was discovered in an unlawful manner. The trial court’s decision to dismiss the charge on this ground without first holding an evidentiary hearing to allow the parties to more fully develop the underlying facts constituted reversible error. See *Talley, supra* at 390 n 3.

Reversed and remanded with instructions that the trial court hold an evidentiary hearing before ruling on the substance of defendant’s motion to suppress. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Barbara B. MacKenzie

/s/ Michael J. Talbot